

**UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

THE U.S. SMALL BUSINESS.
ADMINISTRATION, *et al.*,

Movant/Appellants,

VS.

WEATHER KING
HEATING & AIR, INC.,

Respondent/Appellee.

CASE NO.: 5:20CV2711

Judge Charles E. Fleming

NOTICE OF SUPPLEMENTAL AUTHORITY

The United States, on behalf of the Small Business Administration (SBA) and Isabella Casillas Guzman, in her capacity as SBA Administrator, submits this Notice of Supplemental Authority to notify this Court of the Second Circuit’s decision in *Springfield Hospital, Inc. v. Guzman*, 28 F.4th 403 (2d Cir. Mar. 16, 2022). *Springfield Hospital* rejected a claim virtually identical to the one presented by Weather King here that SBA violated 11 § U.S.C. 525(a) by declining to extend PPP loan guarantees to bankrupt entities.¹ Specifically, the Second Circuit held “Section 525(a) [of the Bankruptcy Code] does not apply to PPP loans.” *Id.* at 408. Consistent with SBA’s arguments here, the Court explained (1) “the plain text of the statute,” (2) “prior precedent,” and (3) “subsequent Congressional action after the passage of the CARES Act” all support the conclusion that the PPP is a loan guarantee program not covered by Section 525(a). *Id.* at 418. Therefore, the Second Circuit held “as a matter of law, [] SBA is entitled to summary

¹ Here, Weather King obtained a loan after falsely certifying on its PPP application that it was not involved in a bankruptcy proceeding when, in fact, it was. Defs. Mot. For Summ. J. (Dkt. 19) at 1.

judgment on the Section 525(a) claim.” *Id.* at 408.

The Second Circuit’s decision on the applicability of Section 525 to the PPP loan guarantee program is consistent with the Sixth Circuit’s controlling decision, *Toth v. Michigan State Housing Development Authority*, 136 F.3d 477 (6th Cir. 1998), which held that Section 525(a) does not cover loans or loan guarantees by its plain terms. *See* Defs. Mot. For Summ. J. (Dkt. 19) at 2, 17-21. While *Toth* should be dispositive of Weather King’s Section 525(a) claim, *Springfield Hospital* leaves no doubt that SBA’s exclusion of debtors in bankruptcy from the PPP does not run afoul of Section 525(a). Moreover, in *Springfield Hospital*, the Second Circuit rejected Weather King’s argument (*see* Weather King Mem. In Supp. of Mot. for Summ. J. (Dkt. 17) at 19) that the Second Circuit’s previous decision in *Stoltz v. Brattleboro Housing Authority*, 315 F.3d 80 (2d Cir. 2002), compelled a different result. *See Springfield Hospital*, 28 F.4th at 421-23 (rejecting argument that *Stoltz* “disturbed” the Second Circuit’s previous case law and reaffirming its prior holding “the plain text of Section 525(a) does not cover loan programs”).

Dated: May 10, 2022

Respectfully submitted,

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ATTORNEYS FOR THE UNITED
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 10, 2022 I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system, which will send a notice of electronic filing to all CM/ECF participants.

/s/ Marc S. Sacks

MARC S. SACKS

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